

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

CORNELIUS HILL	:	
and	:	
TRUDIE HASTINGS HILL H/W	:	
Plaintiffs	:	
v.	:	
Schiffahrtsgesellschaft MS Priwall	:	No. 02-CV-2713
mbH & Co. KG	:	
and	:	
Reederei F. Laeisz G.m.b.h.,	:	
Rostock	:	
Defendants	:	

**MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION IN LIMINE
TO EXCLUDE THE CHARTER PARTY AND THE OPERATORS' INSTRUCTIONS**

Defendants' Motion is frivolous and misapplies Judge Yohn's Opinion in Mankus.

This case does not involve cargo; it involves the condition of a turnbuckle and lashing rod. Plaintiffs' witness says the turnbuckle was not greased and was rusty and the lashing rod was not seated properly.

The Charter Party obliges the shipowner to furnish lashing gear, including turnbuckles and lashing rods, and this is relevant to who was responsible to maintain that gear. Defendants will produce the ship's Captain to testify to how this gear was maintained, so the Charter Party is relevant.

Defendants misapply Mankus since the Charter Party provision in issue is this case in a routine allocation of responsibilities between shipowner and charterer and not a special provision such as in Mankus. Plaintiffs disagree with Judge Yohn's reasoning in Mankus, but that is irrelevant because the Mankus situation is wholly distinct from the case before the Court.

Plaintiffs do not understand what Defendants are referring to when they describe the owner's directions/instructions to the operator. There is no such thing. There are instructions from the operator to the ship's officers, and these are also relevant. They show what the officers were supposed to do and did not do since the turnbuckle was not greased and was rusty.

Exclusion of this evidence would be severely prejudiced to Plaintiffs and clearly erroneous. The Motion should be denied.

Respectfully,

E. ALFRED SMITH & ASSOCIATES

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